

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

EDMUND HO,

Plaintiff,

v.

JAMES DZURENDA, *et al.*,

Defendants.

Case No. 3:24-cv-00239-MMD-CSD

ORDER

Plaintiff Edmund Ho brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 12.) On January 21, 2025, the Court ordered Ho to file an amended complaint by February 20, 2025. (ECF No. 11.) The Court warned Ho that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 8, 10.) That deadline expired and Ho did not file an amended complaint, move for an extension, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition

1 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
2 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
3 *Malone*, 833 F.2d at 130).

4 The first two factors, the public's interest in expeditiously resolving this litigation
5 and the Court's interest in managing its docket, weigh in favor of dismissal of Ho's claims.
6 The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal because
7 a presumption of injury arises from the occurrence of unreasonable delay in filing a
8 pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
9 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
10 cases on their merits—is greatly outweighed by the factors favoring dismissal.

11 The fifth factor requires the Court to consider whether less drastic alternatives can
12 be used to correct the party's failure that brought about the Court's need to consider
13 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
14 that considering less drastic alternatives *before* the party has disobeyed a court order
15 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
16 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
17 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
18 order as satisfying this element[,]” i.e., like the “initial granting of leave to amend coupled
19 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
20 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
21 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
22 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
23 unless Ho files an amended complaint, the only alternative is to enter a second order
24 setting another deadline. But the reality of repeating an ignored order is that it often only
25 delays the inevitable and squanders the Court's finite resources. The circumstances here
26 do not indicate that this case will be an exception: there is no hint that Ho needs additional
27 time or evidence that he did not receive the Court's screening order. Setting another
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1 deadline is not a meaningful alternative given these circumstances. So the fifth factor
2 favors dismissal.

3 Having thoroughly considered these dismissal factors, the Court finds that they
4 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
5 prejudice based on Ho's failure to file an amended complaint in compliance with the
6 Court's January 21, 2025, order and for failure to state a claim. The Clerk of Court is
7 kindly requested to enter judgment accordingly and close this case. No other documents
8 may be filed in this now-closed case. If Ho wishes to pursue his claims, he must file a
9 complaint in a new case.

10 It is further ordered that Ho's application to proceed in forma pauperis (ECF No. 1)
11 is granted. Ho is not required to pay an initial installment fee, but the full \$350.00 filing
12 fee will still be paid in installments under 28 U.S.C. § 1915.

13 It is further ordered that, under 28 U.S.C. § 1915, the Nevada Department of
14 Corrections will forward payments from the account of Edmund Ho, #89285 to the Clerk
15 of the United States District Court, District of Nevada, at a rate of 20% of the preceding
16 month's deposits (in months that the account exceeds \$10.00) until the full \$350.00 filing
17 fee has been paid for this action. The Clerk of Court is kindly requested to send a copy of
18 this order to the Finance Division of the Clerk's Office and to the Chief of Inmate Services
19 for the Nevada Department of Corrections at formapauperis@doc.nv.gov.

20 DATED THIS 5th Day of March 2025.

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23 MIRANDA M. DU
UNITED STATES DISTRICT JUDGE